Office of the Secretary, Education

interest of the child for the duration of
the child’s participation in the re-
search and who is not associated in any
way (except in the role as advocate or
member of the IRB) with the research,
the investigator or investigators, or
the guardian organization.

(Authority: 5 U.S.C. 301; 20 U.S.C. 1221e–3,
3474; and 42 U.S.C. 300v–1(b))

PART 98—STUDENT RIGHTS IN RE-
SEARCH, EXPERIMENTAL PRO-
GRAMS, AND TESTING

Sec.

98.1 Applicability of part.
98.2 Definitions.
98.3 Access to instructional material used
in a research or experimentation pro-
gram.
98.4 Protection of students’ privacy in ex-
amination, testing, or treatment.
98.5 Information and investigation office.
98.6 Reports.
98.7 Filing a complaint.
98.8 Notice of the complaint.
98.9 Investigation and findings.
98.10 Enforcement of the findings.

AUTHORITY: Sec. 514(a) of Pub. L. 93–380, 88
1232h(b)); and sec. 408(a)(1) of Pub. L. 90–247,
88 Stat. 685 (20 U.S.C. 3474(a)), unless otherwise
noted.

SOURCE: 49 FR 35321, Sept. 6, 1984, unless
otherwise noted.

§ 98.3 Access to instructional material
used in a research or experimentation
program.

(a) All instructional material—in-
cluding teachers’ manuals, films, tapes,
or other supplementary instructional
material—which will be used in con-
nection with any research or experimen-
tation program or project shall be
available for inspection by the parents
or guardians of the children engaged in
such program or project.

(b) For the purpose of the section
children means persons not above age 21
who are enrolled in a program under

<table>
<thead>
<tr>
<th>Name of program</th>
<th>Authorizing statute</th>
<th>Implementing reg.</th>
</tr>
</thead>
<tbody>
<tr>
<td>gram and Col-</td>
<td>cation Act of 1965 as amended</td>
<td></td>
</tr>
<tr>
<td>lage Assistance</td>
<td>by the Education Amend-</td>
<td></td>
</tr>
<tr>
<td>Migrant Program,</td>
<td>ments of 1980 (Pub. L. 96–374)</td>
<td></td>
</tr>
<tr>
<td>2. Programs ad-</td>
<td>The Rehabilitation Act of 1973 as</td>
<td>parts 351–356,</td>
</tr>
<tr>
<td>ministered by</td>
<td>amended by Pub. L. 95–602</td>
<td>361, 362, 365,</td>
</tr>
<tr>
<td>the Commis-</td>
<td>(29 U.S.C. 700, et seq.).</td>
<td>366, 369–375,</td>
</tr>
<tr>
<td>sioner of the Re-</td>
<td></td>
<td>378, 379, 385–</td>
</tr>
<tr>
<td>habilitative Serv-</td>
<td></td>
<td>390, and 395.</td>
</tr>
<tr>
<td>ices Administra-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>tion.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. College housing</td>
<td>Title IV of the</td>
<td>part 614.</td>
</tr>
<tr>
<td></td>
<td>Housing Act of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1950 as amended</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(12 U.S.C.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1749, et seq.).</td>
<td></td>
</tr>
</tbody>
</table>

(Authority: 20 U.S.C. 1221e–3(a)(1), 1230, 1232h, 3487, 3507)

§ 98.2 Definitions.

(a) The following terms used in this
part are defined in 34 CFR part 77:
“Department,” “Recipient,” “Sec-
etary.”

(b) The following definitions apply to
this part:
 Office means the information and Inves-
itigation office specified in § 98.5.

§ 98.1 Applicability of part.

This part applies to any program ad-
ministered by the Secretary of Edu-
cation that:

(a)(1) Was transferred to the Depart-
ment by the Department of Education
Organization Act (DEOA); and

(2) Was administered by the Edu-
cation Division of the Department of
Health, Education, and Welfare on the
day before the effective date of the
DEOA; or

(b) Was enacted after the effective
date of the DEOA, unless the law en-
acting the new Federal program has
the effect of making section 439 of the
General Education Provisions Act in-
applicable.

(c) The following chart lists the fund-
ed programs to which part 98 does not apply as of February 16, 1984.
§ 98.4 Protection of students' privacy in examination, testing, or treatment.

(a) No student shall be required, as part of any program specified in §98.1 (a) or (b), to submit without prior consent to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning one or more of the following:

1. Political affiliations;
2. Mental and psychological problems potentially embarrassing to the student or his or her family;
3. Sex behavior and attitudes;
4. Illegal, anti-social, self-incriminating and demeaning behavior;
5. Critical appraisals of other individuals with whom the student has close family relationships;
6. Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or
7. Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program.

(b) As used in paragraph (a) of this section, prior consent means:

1. Prior consent of the student, if the student is an adult or emancipated minor; or
2. Prior written consent of the parent or guardian, if the student is an unemancipated minor.

(c) As used in paragraph (a) of this section:

1. Psychiatric or psychological examination or test means a method of obtaining information, including a group activity, that is not directly related to academic instruction and that is designed to elicit information about attitudes, habits, traits, opinions, beliefs or feelings; and
2. Psychiatric or psychological treatment means an activity involving the planned, systematic use of methods or techniques that are not directly related to academic instruction and that is designed to affect behavioral, emotional, or attitudinal characteristics of an individual or group.

Authority: 20 U.S.C. 1232h(b)

§ 98.5 Information and investigation office.

(a) The Secretary has designated an office to provide information about the requirements of section 439 of the Act, and to investigate, process, and review complaints that may be filed concerning alleged violations of the provisions of this section.

(b) The following is the name and address of the office designated under paragraph (a) of this section: Family Educational Rights and Privacy Act Office, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

Authority: 20 U.S.C. 1231e-3(a)(1), 1232h

§ 98.6 Reports.

The Secretary may require the recipient to submit reports containing information necessary to resolve complaints under section 439 of the Act and the regulations in this part.

Authority: 20 U.S.C. 1231e-3(a)(1), 1232h

§ 98.7 Filing a complaint.

(a) Only a student or a parent or guardian of a student directly affected by a violation under Section 439 of the Act may file a complaint under this part. The complaint must be submitted in writing to the Office.

(b) The complaint filed under paragraph (a) of this section must—

1. Contain specific allegations of fact giving reasonable cause to believe that a violation of either §98.3 or §98.4 exists; and
2. Include evidence of attempted resolution of the complaint at the local level (and at the State level if a State complaint resolution process exists), including the names of local and State officials contacted and significant dates in the attempted resolution process.

(c) The Office investigates each complaint which the Office receives that meets the requirements of this section to determine whether the recipient or